

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

IN RE: INTERIOR MOLDED DOORS
ANTITRUST LITIGATION

Civil Action No. 3:18-CV-00718-JAG

IN RE: INTERIOR MOLDED DOORS
INDIRECT PURCHASER ANTITRUST
LITIGATION

Civil Action No. 3:18-CV-00850-JAG

**OREPAC BUILDING PRODUCTS, INC.’S
MEMORANDUM IN SUPPORT OF MOTION TO STAY**

OrePac Building Products, Inc. (“OrePac”) files this Memorandum in Support of its Motion to Stay, stating as follows:

I. INTRODUCTION

The public disclosure of OrePac’s commercially-sensitive, confidential pricing and customer data should be stayed so that OrePac¹ and its counsel are first given a meaningful opportunity to see and review the data that is threatened with disclosure. As set forth below, OrePac is not a party to this action, had no advance notice that any of its data actually had been filed with the Court, and was given no notice or opportunity to be heard on whether any of OrePac’s data was entitled to redaction from the parties’ reports. Stay of this Court’s September 3, 2020 Order is appropriate to allow OrePac an opportunity to protect certain specific trade secret and confidential data.

¹ Together with about a dozen other companies, who are not parties to this action, but who provided discovery in response to subpoenas.

II. FACTS

OrePac is not a party to this action but in the early part of 2019 was served with subpoenas by both Plaintiffs and Defendants because OrePac sells Interior Molded Doors (“IMDs”). Betz Declaration, ¶¶ 2 and 3. OrePac ultimately agreed to produce a large set of confidential financial and business data after receiving assurances from the litigants that the data was protected from public disclosure by the case Protective Order. *Id.*, ¶ 4. OrePac was next informed about the use of its data on September 16, 2020, when counsel for the IPPs informed OrePac of this Court’s September 3, 2020 order. Over the next eight days, Plaintiffs and Defendants shared with OrePac summaries of OrePac confidential materials which had already been filed, under seal with this Court, as part of several expert reports. Leonard Dec., ¶¶ 7-10. Those summaries reveal that some of OrePac’s most sensitive commercial and business data has been included in the expert witness reports of Russell Mangum, James Levinsohn, and Russell Lamb. Betz Dec., ¶4 and 5. The OrePac data includes specific sales quantities, broken down on a state-by-state basis, showing where OrePac sells its IMDs. It includes “pass through” margins, which reflect OrePac’s profit margins. It includes the names of OrePac’s top customers and the sales volumes that go to those customers. *Id.*, ¶7. This data was all designated “Highly Confidential” because it is treated that way by OrePac and because disclosure of that data to OrePac’s customers, suppliers or competitors would result in serious significant commercial damage to OrePac. *Id.*

III. ARGUMENT

OrePac is not a party to this litigation but its confidential data is subject to this Court’s September 3, 2020 order directing public filing. OrePac has a clear interest in its commercial secrets, an interest that is widely protected as a property interest. *Nixon v. Warner Commc’ns*,

Inc., 435 U.S. 589, 598 (1978). More specifically, OrePac relied upon the case Protective Order in this case, which at ¶ 11 specifically accords third parties, like OrePac, protection against use and disclosure of its confidential information. The Protective Order at ¶ 5 provides that OrePac is entitled to notice and opportunity to be heard if the “Highly Confidential” designations OrePac made are challenged. OrePac received notice that its data had been filed with the Court, and that this Court had ordered public disclosure of that data, for the first time, two weeks *after* this Court issued its September 3, 2020 Order.

OrePac should be granted a stay of this Court’s September 3, 2020 Order so that it may more fully set forth its confidentiality interests, articulate the damage it will suffer by disclosure, and offer appropriate redactions that will allow the expert reports in question to be unsealed. OrePac does not seek a blanket sealing order. As a matter of due process, OrePac is entitled to a stay of this Court’s September 3, 2020 Order, which otherwise requires public disclosure of OrePac’s confidential data tomorrow. That stay will ensure that OrePac has an opportunity to set forth, and this Court has the opportunity to consider and (if appropriate) approve, limited redaction and/or sealing of OrePac’s confidential information in compliance with Local Civil Rule 5 before the expert reports in question are made public. Absent a stay, OrePac will suffer irreparable harm through the public disclosure of its highly confidential materials, without having been afforded a full and fair opportunity to protect such materials from disclosure.

IV. CONCLUSION

WHEREFORE, in consideration of the foregoing, OrePac Building Products, Inc. respectfully requests that the Court grant its Motion to Stay and enter an Order staying the September 3, 2020 Order pending full briefing regarding appropriate redactions and/or sealing of OrePac’s confidential information contained or attached to Plaintiffs’ motions for class

certification. In all cases, OrePac requests that the Court grant it such other and further relief as justice may require.

DATED: October 1, 2020

Respectfully submitted,

OREPAC BUILDING PRODUCTS, INC.
By Counsel

/s/ Patrick J. McDonald

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 1, 2020, I filed the foregoing using the Court's CM/ECF system, which sent a true and accurate copy to all counsel of record.

/s/ Patrick J. McDonald

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